
OPINION OF THE PUBLIC ACCESS COUNSELOR

THOMAS G. ENGEL,
Complainant,

v.

MARION COUNTY CORONER'S OFFICE,
Respondent.

Formal Complaint No.
18-FC-133

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to the formal complaint alleging that the Marion County Coroner's Office violated the Access to Public Records Act.¹ Chief Deputy Coroner Alfarena T. Ballew filed an answer to the complaint with this Office. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by

¹ Ind. Code §§ 5-14-3-1 to -10

the Office of the Public Access Counselor on October 22, 2018.

BACKGROUND

This case involves a dispute between an out-of-state father and the Marion County Coroner's Office ("MCCO") over the access to certain records related to the death investigation of the requestor's son.

Thomas G. Engel ("Engel") contends the MCCO is improperly denying him access—in violation of the Access to Public Records Act ("APRA")—to the following records: (1) Autopsy Photographs (specifically x-rays); (2) Autopsy Drawings and Notes; and (3) Notes and documentation from the scene of death.

Essentially, the MCCO informed Engel these records cannot be released without a subpoena. Unpersuaded, Engel filed a formal complaint with this Office as a result of the denial.

On November 20, 2018, the MCCO filed an answer to Engel's complaint with this Office denying that it has improperly withheld disclosable records from him in violation of APRA.

Although the MCCO's answer denied any violation, it did supplement its response with certain information pursuant to the request.

ANALYSIS

The crux of this case is whether the Marion County Coroner's Office violated the Access to Public Records Act by denying Engel access to x-ray records, autopsy drawings & notes, and the Field Deputy Report without a subpoena.

1. The Access to Public Records Act ("APRA")

The Access to Public Records Act ("APRA") states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." Ind. Code § 5-14-3-1. The Marion County Coroner's Office ("MCCO") is a public agency for purposes of APRA; and therefore, subject to its requirements. *See* Ind. Code § 5-14-3-2(q). As a result, unless an exception applies, any person has the right to inspect and copy the Coroner's public records during regular business hours. Ind. Code § 5-14-3-3(a).

Indeed, APRA contains exceptions—both mandatory and discretionary—to the general rule of disclosure. In particular, APRA prohibits a public agency from disclosing certain records unless access is specifically required by state or federal statute or is ordered by a court under the rules of discovery. *See* Ind. Code § 5-14-3-4(a).

In addition, APRA lists other types of public records that may be excepted from disclosure at the discretion of the public agency. *See* Ind. Code § 5-14-3-4(b).

2. Disclosure of Coroner's Records

Generally, under Indiana law, when a county coroner investigates a death, the agency is required to make the following information available for public inspection and copying:

- (1) the name, age, address, sex, and race of the deceased;
- (2) the address where the dead body was found, or if there is no address the location where the dead body was found and, if different, the address where the death occurred, or if there is no address the location where the death occurred;
- (3) the agency to which the death was reported and the name of the person reporting the death;
- (4) the name of the public official or government employee present at the scene of the death; and the name of the person pronouncing the death.

See Ind. Code § 36-2-14-18(a). Autopsy information is limited to the date of the autopsy, the name of the person who performed the autopsy, where the autopsy was performed, and a conclusion to the probable cause, manner, and mechanism of death.² Also, the coroner must report the location to which the body was removed, the person who determined the location to which the body was to be removed, and the authority under which it was removed.³

What is more, a coroner is required to make available “a full copy of an autopsy report, other than a photograph, a video recording, or an audio recording of the autopsy, upon the

² Ind. Code § 36-2-14-18(a)(5)(A), to -(C).

³ Ind. Code § 36-2-14-18(a)(6).

written request of a parent of the decedent...” *See* Ind. Code § 36-2-14-18(c).

Lastly, the coroner’s office must make available for inspection and copying the coroner’s certificate of death, as well as the investigatory report and verdict. *See* Ind. Code § 36-2-14-18(a)(7).

Notably, this information must be made available within 14 days after the completion of the autopsy report, or, if applicable, any other report including a toxicology report requested by the coroner as part of the coroner’s investigation, whichever is completed last. *See* Ind. Code § 36-2-14-18(h).

Although it appears the MCCO’s answer has been made in good faith, it leaves the primary questions raised by the Complainant unanswered. For instance, *why* does Engel need a subpoena for the records at issue in this complaint?

In other words, the MCCO does not state what legal authority it is relying on to conclude a subpoena is required to disclose these records. To the best of the knowledge of this Office, there is no authority under statutory or case law to support this claim.

Presumptively, the MCCO is exercising its discretion under APRA to withhold these items as *investigatory records* in accordance with Indiana Code Section 5-14-3-4(b)(1). Even so, the agency made no such argument to this Office nor did it state that reasoning to Engel. Instead, the agency simply stated that the requestor that he needed a subpoena. The agency has not stated indicated what, if any, authority it has to withhold these records from the Complainant.

Subpoenas are a creature of trial discovery and generally do not have a place in the public access world save for a limited role in certain outlying matters.

This office recommends MCCO and other public agencies clearly indicate the exemption to disclosure they are exercising instead of simply asserting a blanket “get a subpoena” denial.

In any case, it appears that MCCO may have withheld records from the parent of the decedent contrary to Indiana code section 36-2-14-10(b)(2). This statute mandates a coroner must release photographs of the autopsy to a parent of the decedent if there is no surviving spouse⁴. While notes, drawings, etc. of a coroner may be withheld as investigatory, the MCCO does not argue that they are investigatory in nature. Moreover, the MCCO does not identify a statute allowing it to withhold an x-ray from a parent of a decedent with no surviving spouse.

From the information provided, it appears as if the necessity of a subpoena in this case is unfounded.

⁴ This Office is not aware of a surviving spouse in this case.

CONCLUSION

Based on the foregoing, it is the opinion of the Public Access Counselor that the Marion County Coroner's Office has violated the Access to Public Records Act by failing to provide a statement to the requestor of the specific exemption or exemptions authorizing the withholding of part of the public record as required by Indiana Code Section 5-14-3-9(d)(2).



Luke H. Britt
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